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The Next Task of the Law School

James Parker Hall

THE NEXT TASK OF THE LAW SCHOOL

BY JAMES PARKER HALL*

When, last December, I first saw these beautiful buildings, I could only exclaim: "It is a dream—a wonderful dream come true!" There was nothing original about this exclamation. You have all said or thought the same thing every time you have approached this quadrangle. In my mouth this trite but spontaneous utterance was but part of the *res gestae* of being conducted through the group by Dean Bates, the proud and intimate spirit of this architectural magnificence. And now, when I am privileged to return and to share in the dedication to the high service of man of this miracle of the builder's art, it still seems to me a dream—realized materially for the moment in stone and steel and paneled oak, but even more a symbol and a promise of a fuller realization yet to come in the lives of men. Happy he who dreams such dreams as did the giver of these buildings; happy he who is spared to see his vision enshrined in the enduring stone that today we dedicate; but happiest of all he who knows, as Mr. Cook may do, that from his dream "the best is yet to come". And it is to that dream yet unfulfilled, to that best that yet may come, that I would devote the part allotted to me in these exercises.

There is a new spirit stirring among lawyers today. A change is taking place in the conception of the proper function of a university law school. Until very lately it was conceived almost wholly as a high-grade professional training school, employing, it was true, scholarly methods and exacting standards of study and achievement, but only indirectly seeking to improve the substance and administration of our law. The law, it was assumed, was what the courts and legislatures made it, and the task of the law school was to analyze, comprehend, and classify this product, and to pass on to students a similar power of analysis, comprehension, and classification, as regards at least the principal topics of the law, so as to enable them worthily and successfully to play their parts as judges and lawyers in the lists of future litigation.

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Nor was this for the time being an inadequate or unworthy end. An immense amount of ground-breaking work had to be done to escape from traditional conceptions of legal history, of legal doctrine, of methods of legal reasoning, and of the function and end of law itself, which for years fettered legal scholarship and held it in bondage to a seventeenth and eighteenth century philosophy of law, ill-fitted for an age of conscious experiment and development. Until there had been trained up a considerable body of practitioners familiar with the theories and processes of the newer methods of legal education, and somewhat emancipated from the too rigid legal formulæ of the past, there was small opportunity to do much to improve the content of the common law itself. The discoveries of physical science may be nearly all placed at the disposal of mankind, though very few persons have a clear understanding of their underlying theories. The successful application of medical science requires the skilled participation of the medical profession at large, but all are united in opposition to disease and injury, and those in responsible positions, even of a public character, are not chosen by popular vote. The law is administered and largely made by lawyers and judges in the course of, and as incidental to, litigation, in which the lawyers are necessarily partisan and the judges usually elected by popular vote (to say nothing of direct primaries). Without a well-trained bar the resulting product of law cannot be creditable, and this is why no task of a law school can ever be more important than that of giving the best possible legal education to those who will be the practitioners and judges of the next generation, and also why it must precede all other tasks.

But the efforts of the past thirty years to improve legal education in America have been measurably successful. Over fifty law schools now require at least two years of college work for admission, and, by the concurrent action of the Association of American Law Schools and of the American Bar Association, a movement has been set on foot that is likely to secure adequate requirements for public admission to the bar in most of those states where professional education is fairly well served. The battle for fair educational standards for the legal profession is in the way of being won. The task that remains is of a different sort.

In almost every branch of our law the last thirty years have wit-

nessed a rapidly increasing complexity and uncertainty, often accompanied by a rigidity unresponsive to changing social needs. The causes have been obvious. Fifty different domestic jurisdictions, complex and rapidly changing social conditions, a great volume of litigation, an ill-trained bar, an elective and often rather mediocre judiciary, and the Anglo-American system of law-making by judicial precedent have resulted in a nation-wide complexity and uncertainty about a host of legal doctrines, which occasion constant expense, delay, and irritation in nearly every legal relationship. Some legal complexities are natural, because they correspond to the complexities of life, and some uncertainties are inevitable where there exist arguable differences of opinion about substantial matters of policy; but a large part of all litigation is due to disputes that involve no important questions of policy but only a consideration of conflicting decisions and dicta, or of conflicting analogies.

Few states have a jurisprudence of their own so comprehensive and so well-settled that it is seldom necessary to venture outside the covers of their own reports and statutes in order to find the law on any topic. In most states the judges willingly and necessarily listen to citations from many other jurisdictions upon legal questions where there are gaps in the serried array of their own decisions which the accidents of litigation have never chanced to fill. And in the west, some of our states are still too young to have boxed the compass of legal doctrine even once around within their own courts. It is inevitable, then, at least as regards the substantive law and to a lesser extent as regards procedure, that the search for the law of a single state should cover an ever-increasing territory and that judicial borrowings by one state from the decisions of others should be of undiminishing frequency. This, though sometimes deplored, has very real advantages. The richer and fuller legal experience of the older states is placed at the disposal of the newer ones, and briefs and decisions upon novel questions anywhere in the country are at once made available to all for use in similar situations. A state with a wealth of judicial experience to draw upon, whether its own or that of its neighbors, is much more likely to be able adequately to consider all phases of a controverted question than can a state without such assistance. Everyone knows how much more helpful a few actual cases are, as a basis for discussion, than the same amount of abstract

argument. What we should deplore is not the bulk and variety of our legal material—that in itself is not an evil and has some notable advantages—but that today there often exists no adequate means for its proper appraisal and utilization.

A case will arise that is obviously not concluded by authority in its jurisdiction. By the aid of our present very excellent system of digests and annotated cases it is possible for the attorneys, with reasonable effort, to collect at least nearly all of the principal authorities in other states that directly touch the matter. They are often really or apparently conflicting, and have to be analyzed, discussed, and evaluated in order to be useful, and, in cases of any difficulty, this is a task often performed rather poorly by the average lawyer. To begin with, he necessarily approaches the question with a partisan bias—he is naturally more interested in winning for his client than in improving the law of the state; secondly, being usually a general practitioner, he is seldom an expert in the field of law concerned; and lastly, he can seldom afford the time necessary for a really careful study of the matter. And the courts are usually no more favorably situated, for, while not partisan like the lawyers, they are seldom specialists and are under limitations of time even more pressing than are the counsel who appear before them.

And so it all too frequently happens that the advantages of richness and variety of judicial material are quite neutralized by the lack of time and specialized knowledge necessary properly to work over the quarry and to separate the nuggets from the dross. If this valuable but unwieldly and often conflicting mass of decisions could be explored and sifted and set in order by a body of competent experts in each state, acting along common lines but adapting their work in each state to its particular needs, there would speedily result a marked improvement in the content and administration of our law. What individual lawyers and courts, in the exigencies of partisan litigation, now do poorly and haphazardly, could be done expertly and comprehensively by the faculties of our university law schools, if they were organized with this as one of their major objects—and the benefit to their communities would be very great.

If our states were without agricultural departments, and the task of dealing with the manifold problems arising in this field were left to the individual farmer, or to community groups or voluntary asso-

ciations of farmers, as was the case not long ago, it is clear that no such progress in agriculture would have been possible as has resulted from public agricultural departments and experiment stations, where the problems common to thousands of farms have been patiently and skillfully investigated and dealt with by experts in each of the recognized branches of the calling, and the results made public for the benefit of all. The state agricultural schools have trained scientific farmers, men who know how to induce nature to yield food for man better than did their fathers—but it has also developed agriculture itself by scientific investigation and research, not as a mere by-product of the training of farmers, but as an end in itself for the benefit of the farming class and of the public everywhere, and no one today doubts the wisdom and utility of this or wishes it otherwise.

The same thing has been done in medicine. Our leading medical schools today not only train practicing physicians, instructed in the hard-won knowledge of the past, but they are more and more becoming centres of medical research as well, enlarging the boundaries of knowledge for the future and co-operating with the endowed foundations which are chiefly devoted to research. Our better schools of engineering also conduct research in the problems of applied science, and would doubtless have done so far more widely than they do, were it not that discoveries useful to industry are generally patented and exploited commercially, and that our major industries maintain magnificent research laboratories of their own for this purpose. It is well known how often they are able to use the discoveries in pure science that are the product of research in university laboratories under the direction of university departments of science.

Now, in its essence, law, too, is an applied science, as are agriculture, and medicine, and engineering, and industrial chemistry; and its proper comprehension and beneficial application to the affairs of men often requires research and the skilled service of non-partisan experts, just as do agriculture and medicine and engineering and industrial chemistry; and this research may most usefully be conducted by public or quasi-public agencies, for the same reasons that are potent in agriculture and medicine—that otherwise it will not be done with the thoroughness and fairness and skill that the public need demands.

I will not here enter into a discussion of the difference between

legal principles and those of natural science. It is entirely true that from certain viewpoints—such as, for instance, their origin, and sanctions, and immutability—legal principles can be said only in a metaphorical sense to resemble those of natural science. We may *discover* the so-called laws of nature, but are powerless to make or change them, while the law of real property and of corporations is not only made by custom and courts and legislatures, but may be altered by the same agencies. The frank admission of this important difference between human law and natural science, while fundamental for a certain kind of analysis of the two, in no way affects the analogy just suggested. In agriculture and in medicine the principles involved, though unalterable by man, are so complicated that the public service of experts is necessary to make them usefully available to the community. In the case of law exactly the same situation exists, even though most or all laws could be altered by the legislature or even by decisions of the courts. In the absence of any conscious effort to make such an alteration, the question is—as in natural science—what is in fact the existing principle, and this inquiry in the case of law, as in the case of natural science, is often one that can be answered only by the research and experience of experts. It is also true that the *method* of discovering a legal principle is not the same as that of discovering one of natural science. The method of trial and error in testing the hypotheses of the investigator is the reliance of those who question nature, while considerations of history, custom, precedent, analogy, policy, justice, and professional tradition play a part in the determination of legal principles, and call for the exercise of a kind of judgment different from that which successfully conducts laboratory experiments. But the point to be insisted upon here is the need of research and expert judgment of an appropriate sort in correctly deducing either legal or scientific principles.

The next task of our better law schools, then, should be to provide for skilled research in the principal topics of the law, the development of capable experts in these fields, and the publication of the results of such research so as to be readily available to the profession. In the larger state university schools the work will be organized to serve two different but co-operating purposes: 1) It will make an intensive study of the law of its own state for the benefit of the local bench and bar; and 2) it will make a similar study of ap-

propriate parts of the law of the whole country—in this co-operating or preparing to co-operate with the American Law Institute. An effective organization to do this will require a substantial increase in the present size of law school faculties, a diminution in the hours of teaching, and the deliberate making of productive legal scholarship a larger end of law school effort than it is at present. It will involve the encouragement of true graduate work in law—not merely in the sense of prescribing extra courses but in the more vital sense of training legal scholars—and the establishment of seminars in the more important legal topics or problems. It will involve larger law libraries and a considerably increased expenditure for law schools. It will involve wide-spread and harmonious co-operation with the bench and bar, in order that the social rewards of such endeavors may be realized to the fullest extent. And it will involve a certain period of faith in the wisdom of the undertaking while awaiting the fruits that cannot be immediately garnered.

Here at Ann Arbor such work may be now initiated and carried on under an extraordinarily favorable set of conditions: You have an old and well-established law school, for many of its earlier years without a serious rival in this part of the country; you have a large and loyal body of alumni widely distributed throughout the nation; you are a part of one of our greatest universities, supported by the resources of a rich, populous, and progressive state; you are to have (and in part dedicate today) one of the most beautiful and useful groups of buildings devoted to professional education in the world; you have one of the great law libraries of America; you have an able and enthusiastic faculty, most of whom have their best years yet before them; in Dean Bates you have a leader, wise, energetic, and persuasive, who is happily of an age when he, too, may hope to enter the promised land, instead of merely gazing upon it from Mt. Pisgah; in the Michigan Law Review, with its connections with the state bar association, you have an adequate organ of publicity ready to your hand; and, from private endowment as well as public taxation, you are likely to have the resources necessary to undertake a fitting share in the great public task of clarifying our law and adapting it better to the needs of our time.

And so, as we dedicate today the Lawyers Club, the initial realization of that beautiful quadrangle of law whose remaining build-

ings will soon take shape, we stand on the threshold of a fine and worthy adventure for the betterment of our ancient profession. The temple reared by human hands is before us. It remains for it to be possessed by the spirit of human service for which these cloisters are a fitting habitation. Into it will be poured the labors of devoted teachers and scholars, the efforts of students, the support of alumni, and the co-operation of the profession; and out of it will come, in the fullness of time, an influence that will work mightily for the improvement of our law and its administration in the state and in the nation. Its mission will be conceived in no narrow spirit. It will teach students. It will train scholars. It will hold up high ideals for the profession. It will inspire and help other schools to follow its example. And above all it will labor to simplify and clarify the law, to fashion it to our changing needs, and to keep it the flexible instrument of social progress that is the difficult and crowning achievement of human institutions. To no purposes less high and noble can this beautiful gift be dedicated. And, with the generous and far-sighted giver, it is to the future that we chiefly look. Those of my own years, whose voices are heard here today, will be gone before the full realization of this greater dream. We may do something to point the way, but on the shoulders of the youth that will yet pass through these halls must rest the burden of reaching the goal. Blessed be youth—plastic, vivid, fearless—to whom once in every generation a new heaven and a new earth are possible! Age may dream, as well as youth, and even more often than youth may see its dreams arise in battlemented towers against the sky; but in the world of the spirit, where ideas are translated into life, those dreams come true that under their banners can enlist youth. And because the dream that these buildings shadow forth is one that must appeal to youth—to the able, well-trained, hopeful youth that will pass here some of their choicest years and will receive here the indelible impress of this school—we may well feel that in their hands the ideals of the giver are safe and will prevail.